

## **American Congress of Obstetricians and Gynecologists**

### **Position statement OPPOSING SB1561, SB1562, and SB1563**

**Senate Bill 1563** seeks to amend the Public Health Code (PA 368) by creating a new definition of "fetal remains," that refers to all or any part of a dead fetus of eight (8) or more weeks gestation, or which has visually recognizable body part development. Sec. 2803 (4)

Sec. 2803 (6) defines "miscarriage" as the expulsion of a nonviable fetus up to nineteen (19) weeks gestation ("... before the twentieth week...").

Sec. 2834 (9) creates a new obligation for a health professional who "... is present or is immediately aware of the miscarriage ... shall inform the parents ... that state law requires that authorization be obtained before the final disposition of any fetal remains ..."

Sec 2836 (1) creates a new obligation such that "... a physician who performs an abortion shall arrange for the final disposition of the fetal remains resulting from the abortion."

Sec 2836 (2) does not "... require a physician to obtain authorization from the mother for the final disposition of the fetal remains upon completion of the abortion."

Sec 2848 (2), on the other hand, requires obtaining authorization on "... a form prescribed and furnished or approved by the state registrar ..." from the parent(s) for final disposition of the fetal remains, and that the "... person making the final disposition shall retain the permit for not less than 7 years."

This runs counter to Sec 2834 (2), which indicates that "The (fetal death) reporting form shall not contain the name of the biological parents ... or other information identifiers that would make it possible to identify in any manner or in any circumstances the biological parents of the fetus. "

Sec 2854 (1) creates a new penalty for " A person ... failing to obtain the proper authorization for final disposition ... or to properly dispose of fetal remains ... may be ordered to pay a civil fine of not more than \$1,000.00 per violation."

Sec 2854 (2) invites a civil cause of action against "... a person violating this part as described under subsection (1) ..."

**Senate Bill 1562** seeks to amend "The code of criminal procedure" (PA 175) to include MCL 333.2836 "Violation of requirements for disposition of fetal remains."

**Senate Bill 1561** seeks to amend the Public Health Code (PA 368) to make violation of MCL 333.2836 "... a felony punishable by imprisonment for not more than 3 years or a fine of not more than \$5,000.00, or both."

## **Objections**

1. SB 1563 contains arbitrary, vague and medically inaccurate definitions, which place reproductive health providers at risk for inappropriate criminal prosecution.
2. Secs 2836 and 2848 do not adequately define what is required "... to properly dispose of fetal remains ..." However, failure to do so places reproductive health providers at risk for a civil infraction and /or a civil lawsuit.
3. SB 1563 fails to identify the party that is responsible for final disposition of the products of conception from a miscarriage that occurs outside an institution, and fails to identify the party that is responsible for obtaining and preserving the permit for final disposition when a health provider is present or is made immediately aware of such a miscarriage.

## **Commentary**

Pregnancy outcome vital statistics records are recorded for those pregnancies that reach twenty weeks gestation to identify trends in pregnancy and improve maternal and perinatal outcomes.

Spontaneous abortion, commonly referred to as miscarriage, affects nearly one of every three recognized pregnancies and occurs in the first and early second trimester. These pregnancy losses are most commonly due to abnormalities of chromosomal number or structure that result in developmental anomalies incompatible with life. Many of these abortions occur with little warning and are expelled without medical assistance.

Reproductive health providers are often consulted shortly after such events and must respond to a wide range of related physical, emotional and personal concerns.

To require health providers, under threat of felony prosecution, to discuss a State-imposed mandate requiring written authorization for the final disposition of the pregnancy a woman has just lost is both insensitive and inhumane.

The State of Michigan has enough issues recruiting and retaining health providers to care for its citizens. Enactment of vague and threatening legislation such as Senate Bill Numbers 1561, 1562, and 1563 will only exacerbate the current physician shortage in our state.